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No. 79-664

In the Supreme Court of the United States

OCTOBER TERM, 1979

VENTURA COUNTY, APPELLANT

v.

GULF OIL CORPORATION

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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This memorandum is submitted in response to the Court's invitation of January 7, 1980.

STATEMENT

On January 1, 1974, an oil and gas lease was issued by the Department of the Interior under the Mineral Lands Leasing Act of 1920, ch. 85, 41 Stat. 437, 30 U.S.C. 181 *et seq.*, to Marcia P. Lane. The lease embraced 120 acres of federally-owned land in the Los Padres National Forest in Ventura County, California. Three months later, the lease was assigned to the Gulf Oil Corporation.

In early 1976, Gulf obtained drilling permits in respect of the leased area from the United States Department of the Interior and the Forest Service in the Department of Agriculture and shortly thereafter commenced to drill. In

May 1976, Ventura County brought this action to enjoin Gulf from drilling and exploring for oil on the property until it obtains an Open Space Use Permit as required by the County zoning ordinance. The United States was named as a party to the action, but was subsequently dismissed. However, both in the district court and in the court of appeals, the United States participated as amicus curiae, and argued that the County ordinance did not apply to operations undertaken pursuant to the federally issued oil and gas lease.

The District Court for the Central District of California held that requiring Gulf to obtain a use permit from the County before it could engage in oil exploration and extraction pursuant to a federal oil and gas lease would have the effect of overriding the decision by the federal government to grant the lease, and would thus violate the Supremacy Clause (J.S. App. A-39 to A-40). The court of appeals affirmed and, primarily on the basis of *Kleppe* v. *New Mexico*, 426 U.S. 529 (1976), held that since "the federal Government has authorized a specific use of federal lands, * * * Ventura cannot prohibit that use, either temporarily or permanently, in an attempt to substitute its judgment for that of Congress" (J.S. App. A-10).

ARGUMENT

In our view, the decision below is plainly correct and should be summarily affirmed.

1. Appellant no longer appears seriously to challenge the constitutional power of Congress to pre-empt local regulation of mineral activities on federal lands. At all events, we believe any such argument is foreclosed by this Court's decision in *Kleppe* v. *New Mexico*, 426 U.S. 529 (1976), reaffirming the very broad congressional authority

under the Property Clause over the public domain—even though the area is not a "federal enclave" otherwise within exclusive federal jurisdiction—and the corollary that conflicting State or local regulation must give way under the Supremacy Clause.

Here, as there, it is no objection to the exercise of congressional power that the rule enacted is challenged as creating a potential "nuisance" adversely affecting neighboring lands, or as interfering with otherwise legitimate State or local regulation. See, also, *Federal Power Commission* v. *Oregon*, 349 U.S. 435 (1955). Whatever the limits of the Property Clause, the federal scheme involved in this case cannot be said to ride roughshod over State or local prerogatives or the rights of other property owners. On the contrary, the licensed activities are carefully controlled to protect local concerns and environmental values. All that is claimed is the power to exploit federally-owned property under substantial safeguards without subjecting the operation to a local "veto" "by requiring the [County's] additional permission." *Federal Power Commission* v. *Oregon*, *supra*, 349 U.S. at 445.

We conclude that there is no arguable constitutional issue and turn to the only other question: whether the relevant federal statute in fact pre-empts the provisions of the Ventura County ordinance at issue here.

2. The Mineral Lands Leasing Act of 1920 and the regulations promulgated thereunder comprise an unusually comprehensive and detailed scheme for the exploitation of federally-owned oil and gas resources. Almost no aspect of leasing, exploration, or extraction of the minerals is left unregulated. In the present situation, special drilling permits are required from both the Bureau of Land

Management and the Forest Service. This is, we submit, one of those instances in which "[t]he scheme of federal regulation [is] so pervasive as to make reasonable the inference that Congress left no room for the States [or local authorities] to supplement it." *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947), quoted with approval in *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978). What is more, with respect to the orderly exploitation of vital resources in the public domain, it reasonably may be supposed that the Congress meant to retain in federal hands the implementation of a national policy, unencumbered by any local veto power. Yet, at the end of the day, what the County asserts is a right to prohibit drilling. Unless some provision of the Mineral Leasing Act can be read as expressly subjecting oil and gas exploitation on federal lands to local control, that result must be deemed foreclosed.

In our view, the court of appeals correctly disposed of the contention that the proviso in Section 32 of the Mineral Leasing Act, 30 U.S.C. 189, governs this case. Whatever the scope of that very vague provision in respect of matters other than taxation, it cannot reasonably be construed to require further local approval of a specific permit to drill an oil well on federal lands. That proposition would go much too far in defeating the federal scheme. If Congress had meant to require drilling permits to be submitted to State or local authorities before operations, it surely would have said so more unambiguously.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

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